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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 NICHOLAS CRISCUOLO,

8 Plaintiff,

9 v.

10 GRANT COUNTY, et al.,

11 Defendants.

NO: 10-CV-0470-TOR

ORDER DENYING DEFENDANTS'
MOTION TO AMEND JUDGMENT

12
13 BEFORE THE COURT is Defendants' Motion to Amend Judgment (ECF
14 No. 200). This matter was submitted for consideration without oral argument. The
15 Court has reviewed the briefing and the record and files herein, and is fully
16 informed.

17 INTRODUCTION

18 Defendants seek an order directing the parties to bear their own costs in the
19 wake of Plaintiff's limited success at trial. In the alternative, Defendants ask the
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1 Court to reduce Plaintiff's claimed taxable costs¹ in the amount of \$4,590.67 by
2 four-fifths to account for the fact that Plaintiff only prevailed on one of his five
3 claims. As a further alternative, Defendants ask the Court to declare them the
4 "prevailing party" and award them their own costs.

5 DISCUSSION

6 Federal Rule of Civil Procedure 54(d)(1) governs awards of costs. The rule
7 provides, in relevant part, that "[u]nless a federal statute, these rules, or a court
8 order provides otherwise, costs—other than attorney's fees—should be awarded to
9 the prevailing party." Fed. R. Civ. P. 54(d)(1). This rule "creates a presumption in
10 favor of awarding costs to a prevailing party," but also vests a district court with
11 discretion to deny costs in an appropriate case. *Escriba v. Foster Poultry Farms,*
12 *Inc.*, 743 F.3d 1236, 1247 (9th Cir. 2014). The party opposing an award of costs
13 bears the burden of demonstrating why costs should not be awarded. *Save Our*
14 *Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003).

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16 ¹ Defendants have not specified whether their motion pertains to *all* costs that
17 could potentially be recovered, or whether it pertains only to costs taxable under 28
18 U.S.C. § 1920. As of the date of this order, Plaintiff has only sought to recover
19 taxable costs (*see* ECF No. 208). The Court will presume that the motion applies
20 only to those costs.

1 If a court exercises its discretion to deny costs, it must affirmatively state its
2 reasons for doing so. *Id.* But the court “need not give reasons for *awarding* costs;
3 instead, it need only find that the reasons for denying costs are not sufficiently
4 persuasive to overcome the presumption in favor of an award.” *Id.* (emphasis
5 added). Factors relevant to the decision whether to deny costs include:

6 (1) a losing party’s limited financial resources; (2) misconduct by the
7 prevailing party; (3) the chilling effect of imposing high costs on
8 future civil rights litigants[;] . . . (4) whether the issues in the case
9 were close and difficult; (5) whether the prevailing party’s recovery
was nominal or partial; (6) whether the losing party litigated in good
faith; and (7) whether the case presented a landmark issue of national
importance.

10 *Quan v. Computer Sci. Corp.*, 623 F.3d 870, 888-89 (9th Cir. 2010) (internal
11 quotation marks and citations omitted).

12 As a threshold matter, the Court must address Defendants’ suggestion that
13 Plaintiff is not a “prevailing party” within the meaning of Rule 54(d)(1). ECF No.
14 200 at 8-10. The Ninth Circuit has consistently held that “a party in whose favor
15 judgment is rendered is generally the prevailing party for purposes of awarding
16 costs under Rule 54(d).” *San Diego Police Officers’ Ass’n v. San Diego City*
17 *Employees’ Ret. Sys.*, 568 F.3d 725, 741 (9th Cir. 2009) (quotation and citation
18 omitted). A party need not prevail on all of its claims to be considered a prevailing
19 party under Rule 54(d)(1). *Id.* “Although a plaintiff may not sustain his entire
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1 claim, if judgment is rendered for him[,] he is the prevailing party.” *K-2 Ski Co. v.*
2 *Head Ski Co., Inc.*, 506 F.2d 471, 477 (9th Cir. 1974).

3 Plaintiff easily satisfies Rule 54(d)(1)’s prevailing party requirement.
4 Although he prevailed on only one of his claims, judgment was entered in
5 Plaintiff’s favor against both Defendants jointly and severally. ECF No. 197. The
6 fact that Plaintiff recovered only \$3,842 is not especially relevant to the prevailing
7 party analysis; what matters is that the jury found Defendants liable for “willfully
8 destroy[ing] Slyder without lawful justification.” ECF No. 190 at Instr. No. 15.
9 Accordingly, Plaintiff, as the prevailing party, is presumptively entitled to an
10 award of costs. *Escriba*, 743 F.3d at 1247.

11 Having reviewed the record, the Court finds that the reasons cited by
12 Defendants for denying or reducing costs “are not sufficiently persuasive to
13 overcome the presumption in favor of an award.” *Save Our Valley*, 335 F.3d at
14 945. Although no further explanation is necessary, *see id.*, the Court feels
15 compelled to note that Plaintiff achieved a much higher degree of success than the
16 amount of the judgment might suggest. The central issue at trial was whether
17 Defendant Lamens was justified in shooting Slyder. The jury answered that
18 question in the negative, finding that Defendant Lamens “willfully destroyed
19 Slyder without lawful justification.” ECF No. 190 at Instr. No. 15. While the jury
20 did not find that Defendant Lamens acted “unreasonably” (Section 1983 claim),

1 “maliciously” (malicious injury to pet claim), or “recklessly” (reckless infliction of
2 emotional distress claim), it found squarely for Plaintiff on the primary contested
3 issue—whether the shooting of Slyder was lawful. In view of this substantial
4 success, the Court will deny Defendants’ motion.

5 The Clerk is directed to process Plaintiff’s bill of costs in accordance with
6 Local Rule 54.1(d).


7 **IT IS HEREBY ORDERED:**

- 8 1. Defendants’ Motion to Expedite (ECF No. 201) is **DENIED**.
9 2. Defendants’ Motion to Amend Judgment (ECF No. 200) is **DENIED**.
10 3. The Clerk shall process Plaintiff’s bill of costs in accordance with Local
11 Rule 54.1(d).

12 The District Court Executive is hereby directed to enter this Order and
13 provide copies to counsel. The file shall remain **CLOSED**.

14 **DATED** April 14, 2014.




THOMAS O. RICE
United States District Judge